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In Re Kirk Caraway, Case AD-51

August 9, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN,
SCHAUMBER, KIRSANOW, AND WALSH

On July 6, 2005, Kirk Caraway (the Respondent) and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Agreement, subject to the Board's approval, providing for the entry of a consent order by the Board. The Respondent waived the filing of a formal complaint of misconduct and all further proceedings before the Board to which he may be entitled under the National Labor Relations Act, the Board's Rules and Regulations, or any other authority, and also waived his right to seek judicial review of the Formal Settlement Agreement or the Board's Order. No party or person has objected to this settlement.

The Formal Settlement Agreement is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Agreement.

STIPULATED FACTS

The Respondent is an attorney in private practice in Memphis, Tennessee, and has at all times material to this matter appeared or practiced before the Board in that capacity.

On January 16, 2004, the Regional Director for Region 26 of the Board served a report referring misconduct allegations to the General Counsel of the Board, pursuant to Section 102.177 of the Board's Rules and Regulations. The report involved, inter alia, the Respondent's alleged misconduct during his representation of employees of the Victor L. Robilio Company, Inc. (Robilio), during an organizing campaign by Teamsters Local 1196 in 2003, as well as the Region's processing of Cases 26-CA-21243, 26-CA-21253, 26-CA-21282, 26-CA-21381, 26-CA-21399, 26-CA-21419, and 26-RC-8371, including the Region's petition for injunctive relief under Section 10(j) of the Act.

Based on the report, the General Counsel investigated allegations that the Respondent engaged in the following conduct, without complying with applicable rules concerning disclosure of confidential information and conflict of interests, and without obtaining a valid written or oral waiver of conflict of interests from his clients.

1. On October 9, 2003, obtaining signed representation agreements from nine employees of Robilio after Robilio presented the employees with the representation agreements to sign;

2. Not meeting eight of his nine clients until October 21, 2003, despite having their signed representation agreements on October 9, 2003, and never meeting with his ninth client;

3. During the October 21, 2003 meeting, interrogating his clients regarding union representation matters, including asking whether they wished to be represented by the Union, in the presence of their employer, and

4. Prearranging and accepting payment for representation of his clients from the firm of Allen, Scruggs, Sosamon, Thompson, Simpson & Lillie, the firm representing Robilio in Cases 26-CA-21243, 26-CA-21253, 26-CA-21282, 26-CA-21381, 26-CA-21399, 26-CA-21419, and 26-RC-8371.

ORDER

Based on the above, the Formal Settlement Agreement, and the entire record, the National Labor Relations Board orders that:

In order to preserve and protect the orderly administration of the National Labor Relations Act and effectuate its policies:

IT IS HEREBY ORDERED that Kirk Caraway be, and he hereby is, admonished for the conduct described above.¹

Dated, Washington, D.C. August 9, 2006

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

Peter N. Kirsanow Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ The settlement provides that the General Counsel will report Caraway's alleged misconduct to the Tennessee Board of Professional Responsibility, with a recommendation that the Board's admonishment be found to be sufficient sanction. In addition, it specifies that Caraway will strictly follow the Tennessee Rules of Professional Conduct in the future and that he has reviewed Rules 1.7, 1.8 and 5.4.

